



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 11, 1995

Ms. Lysia H. Bowling
City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR95-551

Dear Ms. Bowling:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29215.

The City of Harlingen (the "city") received a request for the "long distance phone records for calls made Oct. 25, 1989 from the Harlingen Police [Department.]" The city claims the requested records are excepted from required public disclosure under sections 552.103 and 552.108 of the Government Code.

First, we note that section 552.303 requires that you submit the specific information requested to this office for consideration. You were notified by correspondence dated October 4, 1994, to submit copies of the records at issue and that failure to submit the requested information within seven days of the date of the notification would result in a waiver of all discretionary exceptions to disclosure. As you have not submitted the records at issue to this office, you have waived sections 552.103 and 552.108 of the Government Code and the requested information is presumed public.

Second, we note that section 552.022 of the Government Code provides in pertinent part:

Without limiting the meaning of other sections of this chapter,
the following categories of information are public information:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body, if the information is not otherwise made confidential by law.
[Emphasis added.]

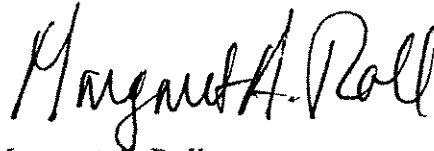
Section 552.022(3) reflects the legislative intent that information regarding the receipt or expenditure of public funds should ordinarily be available to the public.

Consequently, absent a demonstration to this office that certain information contained in the long-distance telephone bills comes under the protection of a particular exception, this office cannot authorize the withholding of that information. The custodian of records has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). If a governmental body does not claim an exception or fails to show how it applies to the particular records at issue, it will ordinarily waive the exception unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987); see also *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (cost or difficulty in complying with Open Records Act does not determine availability of information). Therefore, even if you had submitted copies of the records at issue for our review, your generalized allegations that the information is excepted from disclosure would not have been sufficient to meet your burden.

Third and finally, we note that section 552.117 excepts from public disclosure the home addresses and telephone numbers of all peace officers, as defined by article 2.12 of the Code of Criminal Procedure, and the home addresses and telephone numbers of all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Section 552.117 is not a discretionary exception. Therefore, section 552.117 *requires* you to withhold any home address or telephone number of a peace officer that appears in the requested documents. In addition, section 552.117 *requires* you to withhold any home address or telephone number of an official, employee, or former employee who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the home address or telephone number of an official or employee who made the request for confidentiality under section 552.024 after this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. The remaining information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Margaret A. Roll". The signature is written in a cursive, flowing style.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/LBC/rho

Ref.: ID# 29215

cc: Mr. William Lee
P.O. Box 200814
San Antonio, Texas 78220